S.B.Civil Second Appeal No.39/1986
Jatan Lal through his L.Rs.vs. Rahmat Ali & anr.

Date of order: - 22.3.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. R.R.Nagori ,for the appellant.
Mr. Rajesh Joshi, for the respondents.

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The plaintiff filed the suit for mere injunction on the ground that in the plaintiff's house there are windows and ventilators etc. and the defendant threatened to close the windows and ventilators. According to the plaintiff, those windows and ventilators were very old and in existence since last not only decades but they are old centuries. The defendant submitted written statement and in para no.3 after submitting that the windows and ventilators are not old one, stated that the defendant has not closed any window and ventilator nor he is closing. The same plea was taken in para no.11 of the written statement. However, the defendant also pleaded that even if the said windows and ventilators are closed, the plaintiff is not going to suffer any loss.

The trial court decreed the suit of the plaintiff and restrained the defendant from closing the said apertures. The appellate court merely on the ground that the plaintiff has not proved substantial diminution of air and light, dismissed the suit of the plaintiff. Hence this second appeal. The substantial question of law was framed by this Court on

23.4.1986 to the effect whether any case of a threatened injury to the right of easement, the respondent is entitled to relief of permanent injunction even when he does not suffer substantial loss.

The learned counsel for the appellant, after narrating the facts, stated that in view of the fact that the defendant himself admitted that he neither obstructed the plaintiff's right nor he is obstructing, the plaintiff may be permitted to withdraw the suit with liberty to file the fresh suit in case any occasion arises for the plaintiff for doing so.

In view of the above facts, when the two courts below concurrently held that the window, ventilators and doors etc. are opening in the wall of the plaintiff since more than 20 years from the time of the filing of the suit and there was no threat from the defendant, therefore, the permission is granted to the plaintiff to withdraw the suit with liberty to file a fresh suit in case threat arises.

The suit of the plaintiff is dismissed as withdrawn with liberty to file fresh suit in case any occasion arises. Consequently, the appeal has also become infructuous and the same is hereby dismissed.

(PRAKASH TATIA),J.

mlt.